



November 5, 2018

(Via Email/Facsimile/Personal Delivery)

Office Engineer
DEPARTMENT OF TRANSPORTATION
1727 30th Street, MSC 43
Sacramento, CA 95816
Jill.Sewell@dot.ca.gov

**Re: Contract No. 07-275104
Protest of The Bid of CA Rasmussen, Inc. for the Widen Lanes & Shoulders,
and Upgrade Guard Rails Project ("Project")**

Dear Ms. Sewell:

Shimmick Construction, Inc. ("Shimmick"), the lowest responsive and responsible bidder on the above referenced project ("Project") for the California Department of Transportation ("Caltrans"), submits this protest of the bid filed by C. A. Rasmussen, Inc. ("CAR"). CAR's bid fails to comply with the Bid Documents' requirements and CAR should be subject to a responsibility hearing, as CAR has knowingly listed an unlicensed subcontractor (DRS Rebar, Inc.) in its bid. By listing an unlicensed subcontractor, CAR has been afforded an unfair economic advantage over the other bidders and its bid is not responsive to the Bid Documents, because CAR can shop, post-bid, the unlicensed subcontractor's scopes of work. CAR's bid error potentially effects the price, quality and delivery of the work on the Project and affords CAR the ability to withdraw its bid without penalty. For the reasons discussed below, Caltrans should reject CAR's bid for this fatal defect.

This letter is intended to be:

1. A protest against any award of the contract to a bidder other than Shimmick.
2. A protest against an award of the contract to CAR.
3. A request for mailed notice of all meetings of Caltrans at which any issues pertaining to the award of that contract are on the agenda for the meeting. If there is any fee for this service, please telephone that information to us immediately, so we can promptly pay the fee.
4. A request to be informed (by telephone or fax) as soon as any staff reports or recommendations concerning any issues pertaining to the award of that

contract are available to the public, so we can immediately inspect those reports or recommendations.

5. A request to address Caltrans before or during consideration of any issues pertaining to the award of that contract.

If this letter is not sufficient to accomplish any of these purposes, please let us know immediately what else is required, so we can comply. If we do not hear from you, we will proceed on the basis that this letter is sufficient.

I. CALTRANS CANNOT AWARD THE PROJECT CONTRACT TO CAR, AS CAR'S BID IS NOT RESPONSIVE TO THE BID DOCUMENTS AND GIVES CAR AN UNFAIR ECONOMIC ADVANTAGE.

California law mandates that a public works contract must be awarded to the lowest "responsive and responsible" bidder. To be responsive, a bid must conform to the material terms of the bid documents. (*City of Inglewood v. Los Angeles County Civic Center Authority*, (1972) 7 Cal.3d 861; *Menefee v. County of Fresno*, (1985) 163 Cal.App.3d 1175; and *Konica Business Machines v. The Regents of the University of California*, (1988) 206 Cal.App.3d 449.) Typically, the material terms of a bid, which are not waivable, are those that affect price, quantity, quality, or delivery and those terms that the bid package clearly identifies as mandatory. (*Pozar v. Dept. of Transp.*, (1983) 145 Cal.App.3d 269.)

The law prohibits Caltrans from awarding contracts to a non-responsive bidder. (*Konica Business Machines U.S.A., Inc., supra*, (1988) 206 Cal.App.3d at 454.) In analyzing the bids, Caltrans is tasked with upholding the purpose of competitive bidding, which is to guard against favoritism, improvidence, extravagance, fraud and corruption. (*Domar Electric, Inc. v. City of Los Angeles*, (1994) 9 Cal.4th 161.)

As discussed below, CAR has violated the Bid Documents' requirements by listing an unlicensed subcontractor. As a responsible bidder, CAR knew or should have known that its listed subcontractor was unlicensed, as CAR was required to supply the subcontractor's license number and business information on CAR's bid form. DRS Rebar's licensing information was available on the California Contractors State License Board website, and CAR had constructive knowledge of its subcontractor's licensing status. (See Civil Code § 18; *Division of Lab. Stds. Enforcement v. Ericsson Information Systems, Inc.*, (1990) 221 Cal. App. 3d 114). By listing an unlicensed subcontractor, CAR has received an unfair economic advantage affecting the price, quality and delivery of the Project. Furthermore, CAR could have used this mistake as a reason to withdraw its bid, without penalty, which in and of itself is grounds for rejecting CAR's bid. Accordingly, Caltrans should award the Project contract to Shimmick, the lowest responsive and responsible bidder.

A. CAR's Bid Is Non-Responsive Because CAR Lists As A Subcontractor, DRS Rebar Inc. Whose License Is Expired, Which Violates the Bid Documents and California Law.

Pursuant to Section 2-1.10 of the Bid Documents, each of the bidders were required to list on the Subcontractor List Form subcontractors that will perform work in an amount in excess of 1/2 of 1 percent of the total bid. For each subcontractor listed on the Subcontractor List Form, the bidders were required to provide, among other things, "2. California contractor license number." Section 2-1.10. This requirement is similarly found in Public Contract Code section 4104 for listing subcontractors.

The Bid Documents mandate that **"[e]ach subcontractor must have an active and valid:** 1. State contractor license with a classification appropriate for the work to be performed (Bus & Prof Code§ 7000 et seq.) 2. Public works contractor registration number with the Department of Industrial Relations" [emphasis added]. Here, CAR has listed a subcontractor, DRS Rebar, Inc., to perform bid item numbers 39, 79, 80, 82, 93 and rebar scope of work. (See Exhibit 1). DRS Rebar, at the time of bid and currently, does not possess an active and valid contractor's license. (See Exhibit 2). Thus, by listing an unlicensed subcontractor, CAR's bid is not responsive to the bid documents.

A bid that fails to comply with the material terms of a bid package gives the bidder an unfair competitive advantage over other bidders. (*Ghilotti Construction Company v. City of Richmond*, (1996) 45 Cal.App.4th 897, 904; *Konica Business Machines v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 456-57; *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175, 1180-81.) Deviations that could be a vehicle for favoritism, influence potential bidders to refrain from bidding, or affect the ability of the party receiving the bids to make bid comparisons are material deviations that may not be waived. (*Konica, supra*, (1988) 206 Cal.App.3d 449, 455.) These requirements are strictly enforced to protect taxpayers by inviting competition, to "guard against favoritism, improvidence, extravagance, fraud and corruption," and serve "to secure the best work or supplies at the lowest price practicable." (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 173.)

By knowingly listing DRS, an unlicensed contractor, CAR could now substitute DRS and post-bid shop these bid items and rebar scope of work to other subcontractors to obtain lower quotes. CAR's subcontractor listing errors not only provide it an unfair advantage by being able to bid shop, but also, potentially impact the quality, value and delivery of the work to be performed depending on who actually performs DRS Rebar's scopes of work.

In addition, by listing an unlicensed subcontractor, CAR has received an unfair advantage. Unfair advantages include those errors and omissions which would allow a contractor to withdraw its bid. (*Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1442.) California law

allows a bidder to be relieved of its bid in the event that the bidder made a mistake in filling out the bid form that materially affects the bid. (Pub. Cont. Code, § 5101, *et seq.*) Such mistakes reduce the liability of the bidder, conveying an unfair advantage over other bidders, regardless of whether the bid is actually withdrawn. (*Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1442.) Because these mistakes confer an unfair advantage on the bidder who makes a mistake, public entities must reject any such bid that is not withdrawn voluntarily. (*Id.*)

CAR has been afforded the opportunity to submit a bid knowing that it can withdraw the bid without penalty if it decides not to pursue the project. It was based upon this unfair advantage that the court in *Valley Crest Landscape* rejected the deficient bid and awarded the contract to another bidder. Moreover, CAR cannot feign ignorance as to DRS Rebar's license status, as CAR had to identify DRS Rebar's contractor license number and business information in its bid documents. In completing these forms, CAR should have recognized that it was listing an unlicensed contractor, and that by doing so, it was receiving an unfair advantage under California law.

II. IT APPEARS THAT CAR HAS KNOWINGLY LISTED AN UNLICENSED SUBCONTRACTOR THAT REQUIRES CALTRANS TO CONDUCT A RESPONSIBILITY HEARING.

This matter is similar the factual and legal issues addressed in the matter entitled *D.H. Williams Construction, Inc. v. Clovis Unified School District*, (2007) 146 Cal.App.4th 757. In *D.H. Williams*, the Court held that a school district could not reject a public works bid as nonresponsive when the bidder listed an unlicensed subcontractor on the bid forms. Unlike here, the *D.H. Williams* court found that the district's bid documents did not require the subcontractors to be listed at the time of bid. Recognizing that listing an unlicensed subcontractor was problematic, the *D.H. Williams* court held that the appropriate remedy was for the district to conduct a due process hearing before awarding the contract and determine whether the bidder was a responsible bidder.

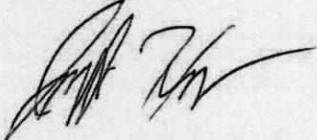
In this matter, CAR, as a responsible bidder, clearly should have verified DRS Rebar's license status as part of its preparation of the Subcontractor Listing Form and to comply with the Bid Documents' requirements. In doing so, CAR would have discovered that DRS Rebar's license had expired. Nonetheless, CAR listed DRS Rebar knowingly that it was listing an unlicensed subcontractor. Similarly, CAR knew that DRS Rebar was not licensed to perform the scopes of work listed in CAR's bid and that CAR would have to substitute DRS Rebar or self-perform that scope of work. (See Pub. Contract Code § 4107). This clearly gave CAR an unfair economic advantage. This is the exact scenario contemplated by the *D.H. Williams* court, when it hypothesized scenarios that could give rise to a finding that a contractor was not responsible.

III. CONCLUSION

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For the reasons discussed above, Caltrans should find CAR's bid to be non-responsive and/or that CAR is not a responsible bidder on this Project, and award the Project contract to Shimmick the lowest responsive and responsible contractor on this Project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Kuzmick', with a stylized flourish at the end.

^{for}
Matt Kuzmick

Executive Vice-President

EXHIBIT 1

STATE OF CALIFORNIA
BID OPENING DATE 11/01/18
CONTRACT NUMBER 07-275104
LOCATION 07-LA-1-38.3/38.7

B I D S U M M A R Y
IN LOS ANGELES COUNTY, IN PACIFIC
PALISADES, FROM NORTH OF TEMESCAL
CANYON ROAD TO BAY CLUB DRIVE

DEPARTMENT OF TRANSPORTATION

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CONTRACT CODE 'D '
93 CONTRACT ITEMS

CONSTRUCT SHOULDERS & UPGRADE

FEDERAL AID SSTG-P001-(652)E

DB GOALS: DISADVANTAGED BUSINESS ENTERPRISE - 13.0%
PROPOSALS ISSUED 14 FUND TOTAL HB1 0
TOTAL NUMBER OF WORKING DAYS 150
NUMBER OF BIDDERS 3 ENGINEERS EST 5,083,735.80 AMOUNT UNDER 2,047,177.40
PROGRAM ELEMENTS RAS PERCENT UNDER EST 40.27

BID RANK	BID TOTAL	BIDDER ID	BIDDER INFORMATION (NAME/ADDRESS/LOCATION)
-----	-----	-----	-----
1	3,036,558.40	2	C. A. RASMUSSEN, INC. 28548 LIVINGSTON AVENUE VALENCIA CA 91355 661 367-9040 00254681 FAX 661 554-7272
2	3,643,396.30	3	SHIMMICK CONSTRUCTION 16481 SCIENTIFIC WAY IRVINE CA 92618 949 333-1500 00594575 FAX 949 333-1510
3	3,924,000.00	1	MICHELS CORPORATION 817 MAIN STREET BROWNSVILLE WI 53006 920 924-4300 00553612 FAX 920 924-4344

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LIST OF SUBCONTRACTORS

BIDDER ID	NAME AND ADDRESS	LICENSE NUMBER	DESCRIPTION OF PORTION OF WORK SUBCONTRACTED
02	ACE FENCE LA PUENTE CA	996577	ITEM 19 (81%)
	ACE FENCE LA PUENTE CA	996577	ITEM 52 (100%)
	ACE FENCE LA PUENTE CA	996577	ITEM 53 (100%)
	ACE FENCE LA PUENTE CA	996577	ITEM 54 (100%)
	ACE FENCE LA PUENTE CA	996577	ITEM 57 (100%)
	ACE FENCE LA PUENTE CA	996577	ITEM 74 (100%)
	ACE FENCE LA PUENTE CA	996577	ITEM 75 (100%)
	ACE FENCE LA PUENTE CA	996577	ITEM 76 (100%)
	ACE FENCE LA PUENTE CA	996577	ITEM 77 (100%)
	ACE FENCE LA PUENTE CA	996577	ITEM 78 (100%)
	ACE FENCE LA PUENTE CA	996577	ITEM 81 (100%)

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LIST OF SUBCONTRACTORS

BIDDER ID	NAME AND ADDRESS	LICENSE NUMBER	DESCRIPTION OF PORTION OF WORK SUBCONTRACTED
02	ACE FENCE LA PUENTE CA	996577	TREATED WOOD WASTE FOR GUARDRAIL
	ACL ONTARIO CA	468840	FORM AND POUR BARRIER
	ACL ONTARIO CA	468840	ITEM 79 (24%)
	ACL ONTARIO CA	468840	ITEM 80 (19%)
	ACL ONTARIO CA	468840	ITEM 82 (41%)
	DRS REBAR CORONA CA	981885	ITEM 39 (100%)
	DRS REBAR CORONA CA	981885	ITEM 79 (27%)
	DRS REBAR CORONA CA	981885	ITEM 80 (24%)
	DRS REBAR CORONA CA	981885	ITEM 82 (29%)
	DRS REBAR CORONA CA	981885	ITEM 93 (3%)
	DRS REBAR CORONA CA	981885	MOBE FOR REBAR

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L I S T O F S U B C O N T R A C T O R S

BIDDER ID	NAME AND ADDRESS	LICENSE NUMBER	DESCRIPTION OF PORTION OF WORK SUBCONTRACTED
02	DRS REBAR CORONA CA	981885	REBAR
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 3 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 6 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 61 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 62 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 63 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 64 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 65 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 66 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 67 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 68 (100%)

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LIST OF SUBCONTRACTORS

BIDDER ID	NAME AND ADDRESS	LICENSE NUMBER	DESCRIPTION OF PORTION OF WORK SUBCONTRACTED
02	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 69 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 70 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 71 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 72 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 73 (100%)
	MANERI TRAFFIC CONTROL FALLBROOK CA	1017741	ITEM 9 (100%)
	MSL ELECTRIC ANAHEIM CA	822450	ITEM 91 (100%)
	MSL ELECTRIC ANAHEIM CA	822450	ITEM 92 (100%)
	MURPHY INDUSTRIAL COATINGS SIGNAL HILL CA	310594	FIELD COATING OF BARRIER
	MURPHY INDUSTRIAL COATINGS SIGNAL HILL CA	310594	FIELD COSTING OF BARRIER
	MURPHY INDUSTRIAL COATINGS SIGNAL HILL CA	310594	ITEM 79 (8%)

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LIST OF SUBCONTRACTORS

BIDDER ID	NAME AND ADDRESS	LICENSE NUMBER	DESCRIPTION OF PORTION OF WORK SUBCONTRACTED
02	MURPHY INDUSTRIAL COATINGS SIGNAL HILL CA	310594	ITEM 80 (7%)
	MURPHY INDUSTRIAL COATINGS SIGNAL HILL CA	310594	ITEM 82 (15%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 1 (63%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 18 (100%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 5 (100%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 55 (100%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 60 (100%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 7 (100%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 83 (100%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 84 (100%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 85 (100%)

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LIST OF SUBCONTRACTORS

BIDDER ID	NAME AND ADDRESS	LICENSE NUMBER	DESCRIPTION OF PORTION OF WORK SUBCONTRACTED
02	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 86 (100%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 87 (100%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 88 (100%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 89 (100%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 90 (100%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	ITEM 93 (2%)
	PAYCO SPECIALTIES CHULA VISTA CA	298637	LEAD COMPLIANCE PLAN FOR STRIPING
	PAYCO SPECIALTIES CHULA VISTA CA	298637	MOBE FOR STRIPING

EXHIBIT 2



CONTRACTORS STATE LICENSE BOARD



Contractor's License Detail for License # 981885

DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

CSLB complaint disclosure is restricted by law (B&P 7124.6) If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.

Per B&P 7071.17, only construction related civil judgments reported to the CSLB are disclosed.

Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.

Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

Data current as of 11/1/2018 12:32:07 PM

Business Information

DRS REBAR INC
1255 KELLEY AVENUE
CORONA, CA 92882
Business Phone Number: (951) 415-2458

Entity Corporation
Issue Date 03/09/2013
Reissue Date 10/26/2016
Expire Date 10/31/2018

License Status

This license is expired.

Additional Status

The renewal application has been received but not yet processed.

Classifications

C50 - STEEL, REINFORCING

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with WESTERN SURETY COMPANY.
Bond Number: 63244683
Bond Amount: \$15,000
Effective Date: 10/26/2017
Contractor's Bond History

Bond of Qualifying Individual

The qualifying individual RUBEN G SANDOVAL certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.
Effective Date: 10/26/2016

Workers' Compensation

This license has workers compensation insurance with the STATE COMPENSATION INSURANCE FUND
Policy Number: 9206141
Effective Date: 03/08/2017
Expire Date: 03/08/2019
Workers' Compensation History